IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.129 of 1998
In
Chamber Summons No.6 of 1996
In
Execution Application No.122 of 1995
In
Award No.110 of 1990

Smt.Raksha R. Mishra. .. Appellant

Vs.

The Jaybharat Credit &
Investment Limited & Ors. .. Respondents

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Shri G.K.Khare with Ms.Maya Kapil i/b Mrs.Kalyani G. Parmar for the Appellant.

Shri Manoj Dalvi for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 24TH JANUARY, 2007

P.C.

1. Heard. This appeal arises from the order dated 23rd October, 1997 passed in Chamber Summons No.6 of 1996 whereby the Chamber Summons which was taken out by the appellant was rejected. The Chamber Summons was taken out in relation to the attachment of the suit premises which was carried out in view of the decree dated 11th January, 1994 which was passed on

the basis of the Award dated 29th May, 1990 in Award No.110 of 1990.

2. In the course of hearing of the matter, the learned advocate appearing for the respondents fairly conceded that the learned Single Judge could not have proceeded to dispose of the Chamber Summons in the manner it was disposed of by the impugned order, and particularly taking into consideration the provisions of law comprised under Order 21 Rule 58 of the Code of Civil Procedure, in view of third party objection raised to the attachment, it was necessary for the Trial Court to record the evidence and to pass an appropriate judgment on the basis of the rival contentions duly supported by the evidence by the parties. Since the impugned order is contrary to the mandate of Rule 58 of Order 21 of the Code of Civil Procedure, the impugned order is hereby set aside and the matter is remanded to the learned Single Judge to deal with the Chamber Summons No.6 of 1996 in accordance with the provisions of law.

3. Needless to say that the Chamber Summons is of the year 1996. Liberty to parties to move before the learned Single Judge for expeditious hearing.

4. Parties to appears before the learned Single Judge on 26th February, 2007 for further directions.

5. The appeal is accordingly disposed of with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)